

DRAFT

RA7

CITY OF MILPITAS MIDTOWN EAST AND WEST PARKING GARAGE PROJECT  
PROJECT 8161

CONSULTING SERVICES AGREEMENT BETWEEN

DRAFT

THE CITY OF MILPITAS AND  
CHONG PARTNERS ARCHITECTURE

405 HOWARD STREET, 5TH FLOOR  
SAN FRANCISCO, CA 94105  
415-433-0120  
415-433-4368 FAX

THIS AGREEMENT for consulting services regarding the new Milpitas Midtown East and West Parking Garage ("Project") is made by and between respectively the City of Milpitas and the Milpitas Redevelopment Agency (hereinafter referred to for convenience only as "City") and Chong Partners Architecture ("Consultant") (together sometimes referred to as the "Parties") as of **April 5, 2005** (the "Effective Date") in Milpitas, California.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Consultant's Duties and Services attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

**1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on **May 19, 2006**, and Consultant shall complete the work described in Exhibit A - Part 1, (Design and Bidding Services) by that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. The parties will discuss an amendment to this Agreement to complete the work described in Exhibit A - Part 2 (Construction Services) prior to the expiration of the current term (for Part 1.) Consultant shall not be responsible for delays caused by the City or by causes beyond the Consultant's reasonable control as determined by the City.

**1.2 Standard of Performance.** The Consultant: (a) shall fulfill and perform all of its obligations under this Agreement, and (b) shall perform all professional services in the manner specified by this Agreement and in accordance with the currently prevailing standards of professionals with the level of experience and training similar to Consultant working in the geographical area in which Consultant practices its profession. Consultant represent themselves as a recognized leader and experienced practitioner in the field of work for the scope of this project and are responsible for performing all work appropriate and necessary to produce a bid package suitable for competitive public bidding as required by the scope of work of this contract.

Consultant acknowledges that it is their obligation to prepare (a) bid package(s), including plans, specifications, and other bid documents; suitable for bidding under the Public Contracts Code. Consultant further acknowledges that Consultant understands the standard of care required of bid packages advertised by public agencies for competitive bidding. The City is relying upon the Consultant's professional skill and experience to prepare the bid package(s). The Consultant shall produce a 100% Construction Documents ready for bid within the schedule, and prior to bidding. The Consultant will be considered to have used due professional care to meet the Standard of Performance if construction change orders, made necessary due to the Consultant's performance, do not exceed 5% of the total construction bid price.

**1.3 Assignment of Personnel.** Consultant shall assign those persons designated in Exhibit C to perform services pursuant to this Agreement. Consultant shall not remove or reassign any designated personnel from the Project without the prior written consent of the City, which City shall not unreasonably withhold. The Consultant shall be allowed to substitute personnel without prior City approval if a designated person leaves the Consultant's employ or is otherwise physically unable to perform the job duties. The new person shall be at least of equal status and experience to the designated person. If City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any designated persons, Consultant shall, upon receiving notice from

City, shall reassign such person or persons. The persons designated in Exhibit C represent the minimum staff to be provided by Consultant. Consultant shall assign additional persons to perform services if they are necessary to meet all of Consultant's obligations under this Agreement, including but not limited to the quality and timeliness of performance required by Section 1.2 above. The Consultant shall keep the City informed of personnel assignments related to this project. City may require Consultant to provide monthly labor reports if City feels that appropriate personnel are not being assigned to project. The Consultant shall disclose to the City in writing any known contractual relationship Consultant has that would favor a supplier or contractor or would create a conflict of interest.

#### **1.4 Time.**

Consultant shall devote such resources, money, personnel, and time to the performance of all of its obligations under this Agreement as may be reasonably necessary to fulfill those obligations, including but not limited to the standard of performance provided in Section 1.2 above. Consultant shall complete each phase by the date scheduled in Exhibit A.

### **Section 2. COMPENSATION.**

City hereby agrees to pay Consultant a lump sum amount of **One Million, Four Hundred Sixty-Five Thousand, Three Hundred Ninety-Seven Dollars (\$1,465,397.00)**, for all work identified as **Basic Services** set forth in Exhibit A; plus if approved in writing by the City, a total for **Additional Services** for non-concurrent scheduling of the garage structures identified in Exhibit B not to exceed **(\$104,000.00)**; plus a total for **Reimbursable Expenses** incurred in performing the work, as described in Exhibit B, not to exceed **One Hundred Twelve Thousand Dollars (\$112,000.00)**.

Total Compensation for Basic Services, Additional Services, plus Reimbursable Services, and the Contingency shall not exceed **One Million, Eight Hundred Thirty-One Thousand, Nine Hundred Twenty Dollars (\$1,831,920.00)** as set forth in Exhibit B. The City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein.

It is anticipated that **Additional Services** for Construction Administration, Cogeneration Design Build and Post Construction support are not included and could be included in an amendment to this agreement.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement. Consultant shall immediately disclose to the City in writing any compensation received by Consultant from persons other than the City if that compensation relates to the Project.

#### **2.1 Completion On Schedule.**

Consultant and City agree that the Consultant has developed both the time schedule and the fee schedule for each phase of work described in Exhibit A. Therefore; the Consultant shall complete each phase on schedule and City shall pay the full lump sum for each phase, which is divided into a 95% Fee for completion and a 5% Fee for early or on-time completion. On-time completion is completion by the scheduled date for that phase. If the Consultant completes work ahead of schedule this will provide float in the schedule as a Consultant resource, but will not change the scheduled dates of subsequent tasks. If the Consultant completes a phase after the scheduled date it does not change the scheduled dates for subsequent tasks except as provided for herein.

If any phase is completed late due to the Consultant's performance, Consultant forfeits the 5% Fee amount. The Consultant is expected to add resources and take whatever measures are necessary to accelerate the work to meet the next phase's scheduled date. If the Consultant recovers the schedule by completing the next or subsequent tasks by their scheduled dates, any otherwise previously forfeited 5% Fee amounts will be paid to Consultant.

If any phase is not completed within one week after the scheduled date due to the Consultant's performance, the City may subtract the amount of seven thousand dollars (\$7,000.) per week, from the 95% Fee as liquidated damages for each week that completion of the phase exceeds the scheduled date. Each week paid, as liquidated damages, will add a week to the remaining phase's scheduled dates.

Liquidated damages and forfeiture of 5% of the fee shall not apply to schedule delays that are not the responsibility of the Consultant.

## **2.2 Invoices**

Consultant shall submit invoices not more often than once a month during the term of this Agreement, based on the percentage of project phase completion prior to the invoice date, as shown in Exhibit B. Invoices shall contain the following information:

Serial identifications of progress bills; *i.e.*, Progress Bill No. 1 for the first invoice, etc.;

The beginning and ending dates of the billing period;

A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;

A tabulation of Reimbursable Expenses for the billing period;

Total invoice amount, total billed to date, and remaining amounts, for each phase.

Certification of the lack of compensation on the Project other than compensation from the City;

False Claims Act certification in the form set forth in Exhibit J;

The Consultant's signature.

## **2.3 Monthly Payment**

City shall make monthly payments, based on invoices received, for services satisfactorily performed; and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. The Consultant shall provide reasonable information for the City to evaluate monthly progress billing.

### **2.3.1 Retention**

City shall retain 10% of each approved payment and withhold that amount. The City shall release retention accrued through the end of the bidding phase after a Successful Construction Bid is received for the Project. For the purposes of this paragraph, a Successful Construction Bid is a responsive bid within 110% of the Final Construction Bid Estimate, or a bid that is awarded by the City Council. If the project is not issued for bid within 60 days of Building Division's approval of the plans and specifications for issuance of a Building Permit, the duration of such plan approval to be in accordance with City standard plan check review time, City will release full retention.

### **2.3.2 Additional Withholding**

City shall have the right to withhold an amount from any payment, including final payment, to compensate the City for costs, fees, damages and other amounts incurred by the City to the extent that such City's incurrence of said amounts was caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, (b) acts for which they could be held strictly liable, (c) or as provided for elsewhere in this contract.

## **2.4 Total Payment.** City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. If Consultant performs services pursuant to the City's request (see Section 2.10 below) that are not within the scope of Exhibit A, then Consultant shall be paid for those services based on the hourly rates for additional services specified in Exhibit B.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a phase or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

- 2.5 **Additional Services.** A contingency amount of Six Hundred Twenty Thousand, Two Hundred, Twenty- Eight dollars (\$620,228.00) is included in the contract that may not be used without express written authorization by the City for additional services. Fees for approved work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B. These fees shall apply through the end of the calendar year in which this Agreement is signed and shall be adjusted each year to be the lesser of the Consultant's standard billing rates or an increase no more than the change in San Francisco-Oakland-San Jose All-Urban Consumers Price Index.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed One Hundred Twelve Thousand Dollars (\$112,000.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement. This amount shall not be exceeded without written authorization of the City and an appropriate increase in the Reimbursable Expense Budget. Travel, food, and accommodations are not reimbursable expenses.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination** If the City terminates this Agreement without cause, pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. If the City terminates this Agreement for cause the City shall not be required to make any further payment to the Consultant, and Consultant forfeits all current accrued retention to-date, except that withheld from previous, satisfactorily completed phases as liquidated damages for the loss to the City to administer the completion of the work by others.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City. Consultant shall notify the City in writing and receive written authorization to proceed, prior to doing any work that Consultant asserts is beyond the scope of work of the present contract phase. Consultant shall not delay in commencing the work after receiving authorization to proceed. Consultant acknowledges that timely performance of services is paramount to avoid delay to the Project and damages to the City.
- 2.10 **Responsibility for Additional Costs.** The Consultant is required to design the project within the City's final construction budget within the cost plan shown in Exhibit D, which defines the anticipated bidding criteria. If the lowest responsible bid for the construction of the Project exceeds the last approved Consultant's bid estimate (Final Construction Bid Estimate) by more than 10%, and City directs Consultant to revise the bid documents for the purpose of reducing the Project cost, Consultant shall make said changes with no increase in fee. If the Project is then re-advertised for bid, Consultant shall provide the additional bid services at no extra cost.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in Exhibit K and only under the terms and conditions set forth therein.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide policies to City that meet the requirements of this section. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of insurance shall be included in the Consultants fees, except for cost of additional insurance that may be provided by the City. Consultant shall not allow any subconsultant to commence work on any subcontract until Consultant has obtained proof that they are adequately covered by all necessary and prudent insurance. The Consultant shall submit the required certificates of insurance or policies upon submitting an executed original of this Agreement.

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned, non-owned, or hired automobiles, to the extent that they exist.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Company-owned automobiles, if any shall be covered at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) or comparable current coverage. Code 1. No endorsement shall be attached limiting the coverage. Consultant shall notify City if any company owned vehicles exist, or if there are any changes in ownership of vehicles owned by the company.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 **Professional Liability Insurance.**

4.3.1 **General requirements.** Consultant, within the fee described in Exhibit B shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, as long as it is reasonably available at that time, to the extent provided in the fee structure of Exhibit B.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of three years after completion of the Agreement or the work. The City shall have the right to exercise any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of work under this Agreement.

#### 4.4 All Policies Requirements.

- 4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete certificates of insurance and certified copies of all policies, including complete certified copies of all endorsements. All copies of certificates, policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.
- 4.4.3 Notice of Reduction in or Cancellation of Coverage. An endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, except after thirty (30) days' prior written notice by mail has been given to the City. If any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner known to Consultant, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change(s) in coverage.
- 4.4.4 Additional insured; primary insurance. Except for the professional liability and workers' compensation policies, a certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- 4.4.5 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.
- During the period covered by this Agreement, only upon the prior express written authorization of City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers, which authorization shall not be unreasonably withheld.
- 4.4.6 Subconsultants. Consultant shall include all subconsultants as insured's under its policies or shall furnish separate certificates and certified endorsements for each subconsultant.

- 4.4.7 **Variation.** The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.
- 4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:
- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
  - Terminate this Agreement, for cause.

## **SECTION 5 INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

Consultant shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents (other than the construction contractor(s)), and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subconsultants, or agents, or (b) acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers, and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance policies and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause.

This indemnification and hold harmless clause shall apply to any such damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

If Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS)

as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

## **Section 7.      LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subconsultant shall use due care to comply with all laws applicable to the performance of the work hereunder. Consultant shall exercise due care that the design and bid documents comply with all laws, regulations, and good practices. Consultant's activities in conducting business shall comply with all applicable laws and regulations.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required to practice their respective professions. Consultant represents to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, or bidder for a subcontract. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in all subcontracts.

## **Section 8.      TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may terminate this Agreement at any time with or without cause upon written notification to Consultant. In the event of termination without cause, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. City understands that incomplete design work and related calculations, and documents may not be suitable for use

If any dispute exists between Consultant and City, Consultant must continue to perform all of its services. City agrees to participate in non-binding mediation if a dispute cannot be resolved informally by the Parties. Consultant must submit its disagreement in writing to the City along with any relevant documentation.



- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that the extension, in and of itself, shall not obligate the City to provide Consultant with compensation beyond the amounts provided for in this Agreement.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's professional competence, experience, and professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, the City shall give the Consultant notice and reasonable opportunity to correct the breach. If the Consultant fails to correct the breach to the City's satisfaction, City's remedies shall include, in addition to all other remedies available to City under this Agreement and law, the following:
- 8.6.1 Terminating the Agreement;
- 8.6.2 Retaining the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement, including rights to use any designs, concepts, or work;
- Hiring a different Consultant to complete the work described in Exhibit A not finished by Consultant, or City staff may complete such work; and/or
- Terminating the Agreement for any breach shall require forfeiture by the Consultant to any claim to all retention held by the City to-date, and the current month's payment otherwise owed to the Consultant and any other amount otherwise owed to Consultant by City under this Agreement.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All significant work products, including drawings and specifications, reports, maps, models, charts, studies, surveys, and photographs, plans, studies, specifications, records, files or any other documents or materials in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City in the normal course of work or upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Consultant agrees that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7,

if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor at the request of City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Mediation.** If a dispute arises out of or is related to this Agreement, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the City and the Consultant, as parties to this Agreement, agree to first endeavor to settle this dispute in an amicable manner by mediation through a mutually agreed-to mediation service before having recourse to a judicial forum.
- 10.2 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.3 Venue.** If either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.4 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.5 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.6 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.7 Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.8 Force Majeure.** The Consultant shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the Consultant.
- 10.9 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et. seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et. seq.*

Consultant hereby states that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant states that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code

§1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.10 **Solicitation.** Consultant agrees not to solicit business at any meeting, or focus group, related to this Agreement, either orally or through any written materials.
- 10.11 **Contract Administration.** This Agreement shall be administered by the Assistant City Engineer or designee, who shall act as the City's representative. All correspondence shall be directed to or through the Assistant City Engineer or designee.
- 10.12 **Notices.** Any written notice to Consultant shall be sent to:  
Chong Partners Architecture  
405 Howard Street, 5th Floor  
Attention: Geoff Adams
- Any written notice to City shall be sent to:  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5411  
Attention: Greg Armendariz
- with Copy to:  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5411  
Attention: Mark Rogge
- 10.13 **Professional Seal.** In accordance to licensing regulations and codes, work shall have the professional seal and signature of the licensed professional responsible for the work. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. Submittals to the Building Department shall be stamped as "building permit submittal" and stamped and signed as required by the Building Department's rules.
- 10.14 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.15 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The following exhibits are included:

- |           |  |
|-----------|--|
| Exhibit A | Scope of Consultant's Duties and Services  |
| Exhibit B | Compensation Manner and Amount, Reimbursable, Estimated Payment Schedule, Hourly Rates |
| Exhibit C | Personnel, The Professional Team   |
| Exhibit D | Building Department Submittal Requirements   |
| Exhibit E | Certificate of Insurance, Certificate of Workers Compensation Insurance                |
| Exhibit F | Invoice or Claim Declaration   |
| Exhibit G | Completeness & Quality Considerations  |

Exhibits Incorporated by reference:

Library Needs Assessment, dated June 26, 2002 by Arroyo Associates, Inc.  
Library Building Program - "Milpitas Public Library Program and Feasibility Study Summary Report", dated February 17, 2004, by Ripley-Scoggin LLP  
Library Draft Conceptual Design, by Group 4 Architecture

## Consultant Proposal Documents and Materials

The Parties have executed this Agreement as of the Effective Date.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Charles Lawson, City Manager

\_\_\_\_\_  
Principal/President

MILPITAS REDEVELOPMENT AGENCY

\_\_\_\_\_  
Charles Lawson, Executive Director

\_\_\_\_\_  
Principal/Secretary,  
Chair Board of Directors

Attest:

\_\_\_\_\_  
Gail Blalock, City Clerk/Agency Secretary

Approved as to Form:

\_\_\_\_\_  
Steven T. Mattas, City Attorney/Agency Counsel

EXHIBIT A

March 25, 2005

Mr. Mark Rogge  
Capital Improvements Project Manager  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5411

Re Midtown East and West Parking Garages Proposal Exhibit A

Dear Mark,

We are pleased to provide you with our revised proposal to perform Architectural and Engineering Services for your two new parking structures for the City of Milpitas. The following, represents our understanding of the project scope, the scope of services required; design through construction and our proposed compensation for those services.

**PROJECT SCOPE**

**General**

The City of Milpitas' goal is to develop two new Parking Structures to serve its Midtown Development on North Main Street. The Midtown Development includes a new Library, County Health Center, senior housing and the Apton development of 130 housing units north of the Library.

In conformance with the requirements of the Request For Proposals (RFP) for the Midtown East & West Parking Garages, dated December 8, 2004, Chong Partners shall perform professional services related to the pre-design, site planning, conceptual design; schematic design; construction documents; bidding and award, construction; architectural support, project close-out and warranty period, for the new Midtown Parking Garages East and West to be located at North Main Street, in the City of Milpitas, California.

It is the City of Milpitas' intent that the two Parking Structures be designed and constructed concurrently. Chong Partners shall provide complete, professional, high quality services and products, and shall provide consultation to City staff, City Council and others who are involved with the Project and shall provide expertise, guidance, advice and assistance in completion of the Project.

Chong Partners shall prepare, and periodically update, Project schedules for the City's review. The schedules shall identify milestones, dates for decisions required of the City, design services furnished by Chong Partners and its sub-consultants, dates of reviews and approvals required by all governmental agencies that may have jurisdiction over the Project, deliverables to be furnished by Chong Partners, completion of documentation, commencement of construction and substantial completion of the work. The schedules shall include adequate time for City review, and shall include the following milestone dates:

Conceptual design, schematic design (30%), and construction documents at 65%, 95% and 100%, and other milestones pertinent to the completion of the project.

Chong Partners shall meet routinely with the City Building, Fire, and Planning Departments, County Health Center project staff, County of Santa Clara Environmental Health (for retail space) during all phases of the design process in order to review local and state codes for zoning, building, and CEQA, and to review and discuss plan review comments. Chong Partners shall make any and all revisions to the plans and provide all submittals to the City as required by the City of Milpitas Chief Building Official and Fire Marshal, and County Health in order for the City to issue the required building permits and occupancy/use permits upon completion of construction.

All work shall be done in an electronic format, appropriate to the work product, including (AutoCAD) drawings, plans, elevations, sections, diagrams, details, etc., (Word) specifications, reports, and other narrative, (PowerPoint) presentations, (Excel) Spreadsheets, (Primavera or Project) schedules, and other appropriate digital electronic formats. Each submittal shall include the digital electronic information on CD, including all files, symbols, libraries, fonts or other information needed to view and print the digital data, as well as a hard (Mylar or paper) copy.

### Midtown East Garage

The Midtown East Garage, as envisioned in the Library Building Program, and further refined in the Library Conceptual Design plan will include up to 325 parking spaces (260 minimum- 325 preferred) on three to four levels. The East Garage will serve the City's new library, which is currently in design, and will be located adjacent to it. The City's goal is to complete construction of the East Garage prior to the start of construction for the Library to allow its use for parking by the Library building and other contractor's. The project budget for the East Garage is \$9.5M total, excluding land costs. Features to be included in the East Garage:

- 1) Two to three decorative vehicle entry/exits, pedestrian access,, two elevators and stairs, ventilation including mechanical ventilation for the first floor. Two will be accessible from behind the Library via the driveway (formerly Weller Lane) and Winsor Street. The third vehicle entry/exit off Main Street will require further study to determine if it will be provided,
- 2) The garage ground level will be elevated approx. 30" to match the ground floor of the Library. It is the City's intent that contaminated soil from the surface of the Library site will be placed under the Garage ground floor slab and encapsulated. The structure will also be designed over an existing SBC/AT&T telecommunications trunk line duct bank that is to remain operational in-place,
- 3) Direct pedestrian connection from the Garage to the Library lobby,
- 4) Public historic vehicle/fire equipment display area on the ground floor of the Garage with space for up to two vehicles - actual size to be determined,
- 5) A co-generation facility to serve the Library and East Garage (and possibly the West Garage) will be located within the East Garage. (A study will conducted to evaluate its feasibility),
- 6) A photo-voltaic panel array will be installed on the top parking level,
- 7) The co-generation and or photo-voltaic installations will include interpretive displays,
- 8) The Library and possibly other contractor's trailers will occupy the top parking level during construction of the various Midtown projects. In the future, approximately 5000 sf of Library administrative offices may be located on the top level and the structure will be designed for this expansion flexibility,
- 9) Architectural interior finish elements at key locations where the East Garage and Library are adjoining will not be constructed as part of the Garage but will be included in the Library construction. The Garage is scheduled to be completed approximately two years before the Library,
- 10) Garage access control equipment; security system with CCTV and video-recording equipment; data and telecommunications and provisions for future revenue collection equipment will be provided,
- 11) Site improvements will include on-site driveways, sidewalks, pedestrian plazas/connections to adjacent facilities, landscaping/irrigation, site-lighting and way-finding graphics and signage. Coordination with the Library team and the Midtown Streetscape design will be required to determine the elevation and geometrics for the new cul-de-sac on Winsor Street where it will be closed south of the garage.

## Midtown West Garage

The Midtown West Garage is to be a distinctive architectural statement and landmark for the Midtown area, with up to 300 parking spaces (275 minimum, 300 preferred) on three to four levels, will serve the proposed County Valley Health Center and other Main Street uses. Refinements during the Conceptual Design phase will allow determination of the exact size of the structure, including study of the provisions for designing the structure for future inclusion of a banquet facility on the top floor. The Santa Clara County is funding a portion of the construction of the West Garage with respect to the required 275 parking spaces.. Features to be included in the East Garage:

- 1) One decorative vehicle entry/exits off Main Street, pedestrian access, two elevators, and stairs. Additional or alternative entry/exits may be included based upon discussions with the City and Caltrans regarding reconfiguration of the Main Street off-ramp, fire-lane access to the Health Center, Emergency Vehicle Access, etc.
- 2) The West Garage will be designed to accommodate future, vertical addition of two parking levels and or possibly a banquet facility; The Conceptual Design and Schematic Design Phase will determine the ability of this work.
- 3) A photo-voltaic panel array will be installed on the top parking level and will include an interpretive display,
- 4) The ground floor will include 5000 s.f. +/- of commercial/retail shell space. No grease trap or kitchen hood vent shaft will be included, however provisions for these facilities will be roughed in for improvement by future tenants,
- 5) Garage access control equipment; security system with CCTV and video-recording equipment; data and telecommunications and provisions for future revenue collection equipment will be provided for in the design,
- 6) Site improvements will include on-site driveways, sidewalks, pedestrian plazas/connections to adjacent facilities, landscaping, site-lighting and way-finding graphics and signage.

## PROJECT TEAM

Chong Partners Architecture (CPA), with Geoff Adams as lead, with Gordon Chong as Principal in-charge and Walker Parking Consultants, together with geotechnical, civil, mechanical and electrical engineering; landscape, security, telecommunications and cost estimating subconsultants, will comprise the design team. Walker will assist CPA in parking functional planning and structural engineering. CPA will be the Architect of Record for both projects and will organize the projects and manage the design teams from the beginning of the Projects through their completion, including Concept Design, Schematic Design, Construction Documents, Bidding, and Construction Administration. ( Strategic Economics will provide the marketability analysis related to the decisions surrounding the commercial/retail/restaurant space in the west garage.)

## SERVICES

### Concept Design

- 1) Chong Partners Architecture will meet with the City's project representatives to review and confirm the criteria for the Project and to clarify key issues relative to the design, level of service (LOS), vehicular and pedestrian circulation, architectural and site design opportunities and objectives, budget and schedule. CPA will tour the garage sites with City staff and will conduct a tour for the City staff of at least 3 Parking Garage that CPA and the City mutually identifies, in order to include desirable elements where possible. CPA will assist the City to refine the exact size and shapes of the structures.



2) The design parameters of the parking structure will be documented, including:

- Site circulation criteria (traffic flow and volume)
- Coordination with the Library and Main Street projects
- Commercial/retail/restaurant marketability analysis for the West Garage design
- Ventilation
- User profile (employees, visitors, etc.)
- Parking geometrics (required stall sizes, bay dimensions and ramp system)
- Entry/exit lane requirement (access and revenue control concept)
- Pedestrian vertical transportation systems (quantity, size and location of elevators and stairs)
- Bicycle and/or motorcycle parking provisions
- Durability and maintenance
- Safety and security provisions
- Lighting/illumination criteria
- Fire protection system requirements
- Building code analysis
- Title 24
- Seismic & geotechnical requirements
- Urban design criteria and Architectural character
- Study the effects of meeting the requirements of the City's Floodplain Management Ordinance and the FEMA requirements for structures within the Special Flood Hazard Area.
- Provisions for future expansion of floors for parking or office or banquet facility.

- 3) Chong Partners Architecture (CPA) and its consultant team will review all existing project related data provided by the City, including available topographic and utility surveys, geotechnical data and hazardous material studies.
- 4) CPA shall conduct soil borings and prepare geotechnical reports for the design of the project foundations and structural design. The design shall address potential noise and vibration factors, particularly from rail lines, and minimizing negative impacts of noise, and reasonable isolate vibration from negative impacting the use of the structure.
- 5) CPA shall review local and state building and zoning codes, the recommended library conceptual design, and will document and provide written confirmation of this task including any design issues or opportunities.
- 6) For the East Garage, CPA will meet with the City and the Library Architect to coordinate design of areas where the Garage connects to the Library; code-required building separations, opening protection, pedestrian connections, interior design elements, etc.
- 7) CPA will prepare conceptual design studies that illustrate implementation of the above-defined criteria for both Parking Structure projects concurrently. Architectural plans, elevations, and a massing model will be prepared that show design intent, height/bulk and material use. The focus of the architectural alternatives will be the development of the structures as they relate to the adjacent Library, Health Center and proposed Main Street streetscape improvements.
- 8) CPA will prepare conceptual design studies of the garage interior to include garage entry lobby connection to the Library, elevator and stair lobbies, historic vehicle display area, interior wall graphics and signage and Library-related interpretive displays at each floor of the main garage lobbies.
- 9) A regular schedule of project meetings will be established to review the progress of the planning and design. Meetings will be held with the City Council Sub-Committee and the Library team for the East Garage and with Santa Clara County for the West Garage. All project meetings will be conducted on the same meeting day for both Parking Structure projects.

- 10) A regular schedule of technical project meetings will be established with Building and Fire, Planning, Police and Information Systems Departments, and County staff as required. Scheduled meetings will include and address both projects
- 11) CPA and the City will meet with SBC and Caltrans regarding access to the West Garage and potential reconfiguration of the Main Street off-ramp from Calaveras, and construction over the existing SBC trunk line.
- 12) The design alternatives will be presented to the City's representatives and preferred concepts will be selected for the two garages. Chong Partners Architecture will develop the preferred alternative further and present the Concept Design. Presentations will include the Economic Development and Planning Commissions.
- 13) Concurrent with the development of the Conceptual design, a study, with estimated additional construction costs, will be conducted to assess the feasibility of a co-generation facility for the East Garage; appropriate ground floor commercial/retail mixed use for the West Garage, accommodations for future vertical expansion of the West Garage for additional levels of parking and or banquet facility space, and accommodations for rooftop office space on the East Garage.
- 14) Site surveys and geotechnical reports will be prepared for both Garages.
- 15) The approved Concept Design will be documented to include information regarding architectural expression, materials, and finishes. Narrative descriptions of engineering and building systems will be prepared. The deliverables shall include:
  - Architectural Site Plans
  - Floor Plans
  - Building Elevations
  - Building Sections
  - Massing Models (physical or computer)
  - Building Systems Narratives
  - Surveys
  - Geotechnical Reports
  - Cost Estimates
  - Cogeneration Feasibility Study
  - Mixed-Use Feasibility Studies
  - Title 24 studies
  - Site surveys and geotechnical reports
  - West garage marketability analysis for the ground level retail/commercial space
  - Estimated Construction Costs and schedules
  - site plan diagrams, three-dimensional and study massing models. The massing models shall address solar impacts on the structures where appropriate, including glare, warming, and other affects, and illustrate day and night conditions from both an interior and exterior perspective.
  - Submit an evaluation of radio communication effectiveness (Police & Fire) inside and outside the building.
  - Vertical expansion studies and estimates
- 16) Up to eight meetings with City Staff are included in this phase for both projects plus two meetings with Caltrans and SBC on the West Garage

### Schematic Design

- 1) Based upon the approved Concept Design and building system approach, CPA will prepare Schematic Design drawings, outline specifications and cost estimates for the two parking garages concurrently

- 2) A regular schedule of project meetings will be established to review the progress Schematic Design of both projects. Meetings will be held with the City Council Sub-Committee and the Library team for the East Garage and with Santa Clara County for the West Garage, Caltrans, and SBC as needed.
- 3) The Schematic Design for the East Garage will be coordinated with the Library design , specifically those areas where the Garage connects to the Library; code-required building separations, opening protection, pedestrian connections, interior design elements, etc.
- 4) A regular schedule of technical project meetings to review both projects concurrently will be established with Building and Fire, Planning, Police and Information Systems Departments
- 5) Perform code compliance review per the City's Fire, Building, Planning Departments and the County Health Department
- 6) The schematic design will be presented to the City's representatives in the above meetings and preferred design will be selected for the two garages. Chong Partners Architecture will develop the design further and present the schematic design. Presentations will include the Economic Development and Planning Commissions.
- 7) Deliverables shall include Preliminary:
  - Architectural Site Plans
  - Civil Site, Utility Plans, and Landscape Plans
  - Schematic engineering design recommendations of written design criteria for mechanical, electrical, fire protection, lighting, security and data/telecom systems
  - Parking layout include locations for City vehicles, employees, book drops, refuse collection, visitors, and pedestrian access
  - Floor Plans
  - Stair and elevator locations and design
  - Equipment Plans
  - Building Sections
  - Building Elevations
  - Wall Sections
  - Foundation and Framing Plans
  - Mechanical and Electrical Plans
  - Typical Construction Details
  - Draft Specifications
  - Material and Finish Board
  - Attend one 8-hour value engineering session with CPA estimator
  - Provide study models, perspective sketches, electronic modeling, or combinations of these media
  - Refined Cost Estimates and construction schedules
  - Preliminary outline specifications with consistence with the City standard specifications, and any recommended bid alternatives
  - Submit 1 electronic digital set and 1 reproducible, and 6 copies of the 50% and 100% phase schematic design documents
  - Carfully review and respond to comments provide by the City and other agencies on the project team
- 6) Up to six meetings for both Garages are included in this phase.

#### Construction Documents

- 1) A regular schedule of project meetings will be established to review the progress of the Construction Documents for both projects. Meetings will be held on the same day with the City Council Sub-Committee and the Library team for the East Garage and with Santa Clara County for the West Garage, Caltrans and SBC as needed.

- 2) A regular schedule of technical project meetings for both projects concurrently will be established with Building and Fire, Planning, Police and Information Systems Departments.
- 3) Pre-final Tasks
  - incorporate comments from the Schematic Design review.
  - Coordinate architect/engineer team activities.
  - Review revised construction cost estimates.
  - Prepare 65% complete drawings and specifications for review
- 4) Pre-final Deliverables (for Plan Check)
  - 95% complete construction drawings and specifications for review
  - Final cost estimate
- 5) Final Deliverables
  - Final construction documents (100%) with City approval suitable for bidding and construction
- 6) Eight meetings are included in this phase for both Garages.

#### **Bidding Support**

- 1) Bidding Support Tasks
  - Review invitations for bids
  - Review bidders list
  - Attend pre-bid meetings (2) minimum
  - Prepare required addenda
  - Assist owners in bid analysis
- 2) Deliverables
  - Log of all bidding questions
  - Addenda as required

#### **Construction Administration (Additional Service, Not in Contract)**

- 1) Tasks
  - Attend pre-construction meeting
  - Attend weekly construction progress meetings, prepare meeting minutes
  - Process submittals and shop drawings
  - Respond to RFIs
  - Maintain submittal and RFI logs
  - Administer scope change proposals
  - Review certificates for payment
  - Provide site observation reports and preliminary and final punch lists
  - Assist in project close-out; review final payment request, issue Certificate of Substantial Completion
- 2) Deliverables
  - Reviewed shop drawings and submittals
  - Compiled certifications, O&M documents & warranties
  - Create record drawings, from As-Built Drawings submitted by the Contractor
- 3) Weekly meetings/site visits for both construction projects concurrently are included in this phase for architectural (58 total) and bi-weekly for structural through completion of the frame and decks (16 total). Six meetings each are included for civil, mechanical and electrical; two meetings for landscape.

## COMPENSATION

We propose a lump sum total fee not to exceed **\$1,831,920.00** as shown in Exhibit B for Basic Services plus Reimbursable Services, plus Contingency, and plus if approved in writing by the City, **\$104,000** for Additional Services for non concurrent scheduling of the garage structures. Additional Services for Construction Administration, Post Construction Support, Cogeneration Design Build, including contingency are additional services that would be included by an amendment to the Agreement. The fee for these additional services is proposed at \$599,308.

### Reimbursable Expenses

Reimbursable expenses are in addition to Basic and Additional Services and include limited out-of-pocket expenses incurred by Chong Partners and its employees and sub-consultants in the interest of the project including expenses of all reproductions; plotting and printing; postage, delivery and handlings of drawings, reports and specifications as allowed by the Agreement. Reimbursable expenses will be billed at cost plus 10%.

### Invoicing

Monthly, percent complete invoices will be submitted based on an agreed to payment schedule for the duration of the project, which will allocate appropriate fees per month for each phase of the project. This payment schedule will be developed in consultation with the City.

## PROJECT ASSUMPTIONS

The following assumptions have been made in the preparation of our proposal regarding the project scope and scope of services

- Basic services for the two parking structures include: project management, architecture (except for portions of the East Garage as indicated in next Assumption below); parking planning; civil, structural, geotechnical, mechanical, plumbing and electrical (power, lighting, fire alarm and telecommunications) engineering; security design, cost estimating and landscape architecture.
- The two parking structure projects will be designed, bid and constructed concurrently as one project with the same schedule included as part of this scope One bid and construction document package will be prepared and issued for both garages for one bidding phase and for one construction contract. Development of multiple bid packages or documentation of phased construction or construction under two contracts shall be an additional service.
- Design of all tenant improvements for commercial retail shell space will be performed by the future tenants, including mechanical, electrical and plumbing systems and interior construction and finishes.
- Site improvements will include on-site sidewalks and landscape elements; site lighting, graphics, signage and paving and planting around the structures. Off-site improvements will include the closure of Winsor Avenue adjacent to the East Garage; new paving, curb, gutter, sidewalks and street lighting. The north driveway to the Library bookdrop and to the garage entry will be the responsibility of the Library project. Garage civil engineering will include coordination with City's separate Main Street project and with the Library team for the East Garage.
- All design and building permit approvals will be obtained from the City of Milpitas. CPA will assist the City in obtaining necessary approvals from Caltrans for proposed changes to the Calaveras Street off-ramp, and from SBC for construction of the West Garage over the buried SBC trunkline under that site. The effort to secure any other entitlements, i.e. State or Federal government or other third-party approvals, shall be an additional service
- The City will schedule all project review meetings for both projects, concurrently with all required attendees; City staff, sub-committee members, design teams for adjacent projects, etc. It will be the responsibility of the City to insure that these meetings are attended by those parties with the responsibility and authority for decision-making necessary to maintain the project schedule.

- Site surveys and geotechnical investigations are included for both sites. Based upon the availability of existing survey and geotechnical data from the City, the scope and fee for these services may be adjusted accordingly.
- Phase 1 and 2 hazardous material reports for the East garage have been completed, and those for the West garage are in underway.
- The City will complete demolition and/or removal of existing structures from the sites separately.
- All environmental clearances (CEQA/NEPA) for the projects have been obtained by the City.
- The City will prepare the Construction Contract General Conditions, Supplementary and Special Conditions and Notice to Bidders to be included in the Specifications and will provide these at the earliest opportunity.
- The City will print the bid sets of contract drawings and specifications for bidding and construction.

## **ADDITIONAL SERVICES**

The following services, when approved in writing by the City, shall be considered work beyond the scope of services outlined above and will be billed on an hourly basis as an additional service:

- Work resulting from changes in scope or magnitude of the project from changes requested and/or authorized by the City after the Architects' work has been previously approved by the City.
- Non-concurrent scheduling of the structures
- Additional services caused by schedule delays or interruptions.
- Meetings in addition to those outlined in the Scope of Services described above, separate meetings for the two parking structure projects or other special hearings, presentations or community workshops required to secure Project approvals. The Flat Rate for attending additional meetings shall be: \$\_\_\_\_\_per hour.
- More extensive site representation during construction
- Standard Urban Storm Water Mitigation Plan (SUSMP) and Storm Water Pollution Prevention Plan (SWPPP) (normally prepared by the Contractor).
- Preparation of a Soil Management Plan or any contaminated soil or other hazardous material remediation/abatement related services.
- Geotechnical consulting services during design and construction
- Off-site, site improvements, including upgrading or extending off-site utilities or realignment, reconstruction of adjacent streets, curbs, gutters, etc. other than those identified for Winsor Avenue adjacent to the East Garage.
- Changes required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; provided that Architect should not have known of such forthcoming revisions to such codes, laws or regulations as a result of generally available notices or publicity.
- Preparation of revised bid documents to include posted addenda

We look forward to the opportunity to working with the City of Milpitas on these exciting projects. We have attempted to provide you with our understanding of the goals, objectives and scope of these projects as well as our corresponding estimate of services; tasks, milestones, work effort and fees required for their successful completion. We look forward to meeting with you to discuss the projects further and answer any questions you may have.

Sincerely,

Geoff Adams, AIA  
*Associate Partner*

**EXHIBIT B**

**Total Design Fee     \$1,831,920**

<u>Garage</u>	<u>East</u>	<u>West</u>	<u>Total</u>
Basic Services	\$726,603	\$738,794	\$1,465,397
Reimbursable Services	\$55,000	\$57,000	\$112,000
Contingency	\$75,523	\$75,000	\$150,523
Additional Services	\$55,000	\$49,000	\$104,000
<b>Total</b>	<b>\$912,126</b>	<b>\$919,794</b>	<b><u>\$1,831,920</u></b>



CHONG PARTNERS Architecture

City of Milpitas

Midtown East Parking Structures

Fee Summary

Current As of: 3/28/05

**Exhibit B**

**BASIC SERVICES**

Parking Structure Design	Conceptual Design	Schematic Design	Construction Documents	Bidding	TOTAL
Architecture/Project Management	82,120	86,920	136,520	21,682	327,242
Parking Functional/Structural	33,200	48,730	84,980	4,000	170,910
MEP, Telecomm, Security	2,300	15,400	34,400	1,000	53,100
Acoustical		1,500	2,500	500	4,500
Site Survey	9,900				9,900
Geotechnical	41,951				41,951
Civil	5,000	12,800	40,380	500	58,680
Landscape		4,900	14,500	500	19,900
Cost Estimating	2,500	5,000	12,000		19,500
Cogeneration Feasibility Study	20,920				20,920
Subtotal Basic Services	\$197,891	\$175,250	\$325,280	\$28,182	\$726,603
Basic Service Contingency					\$75,523
Reimbursable Expenses					\$55,000

CHONG PARTNERS Architecture

City of Milpitas

Midtown East Parking Structures

Fee Summary

Current As of: 3/28/05

Exhibit B

**ADDITIONAL SERVICES**

Parking Structure C.A.	Construction Administration	Post Construction	TOTAL
Architecture/Project Management	156,408	2,000	158,408
Parking Functional/Structural	40,196	1,000	41,196
MEP, Telecomm, Security	9,100	1,000	10,100
Acoustical	1,000		1,000
Site Survey			0
Geotechnical			0
Civil	4,900	1,000	5,900
Landscape	4,100	1,000	5,100
Subtotal Additional Services	\$215,704	\$6,000	\$221,704

Contingency			\$65,000
-------------	--	--	----------

Non Concurrent Scheduling			\$55,000
---------------------------	--	--	----------

Cogeneration Services	Construction Documents	Bidding	Construction Administration	Post Construction	TOTAL
Design- Build Support	16,200	1,000	2,000	1,500	20,700

CHONG PARTNERS Architecture

City of Milpitas

Midtown West Parking Structures

Fee Summary

Current As of: 3/28/05

Exhibit B

**BASIC SERVICES**

Parking Structure Design	Conceptual Design	Schematic Design	Construction Documents	Bidding	TOTAL
Architecture/Project Management	79,480	104,340	127,800	21,568	333,188
Parking Functional/Structural	33,850	53,800	95,316	4,200	187,166
MEP, Telecomm, Security	2,300	13,350	30,600	1,600	47,850
Market Analysis	5,000				5,000
Acoustical		1,500	2,500	500	4,500
Site Survey	8,400				8,400
Geotechnical	41,770				41,770
Civil	5,000	12,220	35,600	500	53,320
Landscape		9,400	27,700	1,000	38,100
Cost Estimating	2,500	5,000	12,000		19,500
Subtotal Basic Services	\$178,300	\$199,610	\$331,516	\$29,368	\$738,794
Contingency					\$75,000
Reimbursable Expenses					\$57,000

CHONG PARTNERS Architecture

City of Milpitas

Midtown West Parking Structures

Fee Summary

Current As of: 3/28/05

Exhibit B

**ADDITIONAL SERVICES**

Parking Structure C.A.	Construction Administration	Post Construction	TOTAL
Architecture/Project Management	152,604	1,500	154,104
Parking Functional/Structural	41,300	1,500	42,800
MEP, Telecomm, Security	9,100	1,500	10,600
Market Analysis			0
Acoustical	1,000		1,000
Site Survey			0
Geotechnical			0
Civil	5,000	1,500	6,500
Landscape	10,400	1,500	11,900
Subtotal Additional Services	\$219,404	\$7,500	\$226,904
Non Concurrent Scheduling			\$49,000
Contingency			\$65,000

## City of Milpitas, California

Budget # \_\_\_\_\_  
Refer # \_\_\_\_\_BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	391-9518170153999	\$1,300,000	391-951817014800	\$1,200,000
<input type="checkbox"/> Budget Transfer	390-2940	\$1,300,000	391-951817024800	\$100,000
			390-3999	\$1,300,000

**Explain the reason for the budget change:**

The Midtown Parking Garage West CP 8170, which will be built on the west side of North Main Street near the proposed Health Center, was included in the City Council approved Memorandum of Understanding for the County Valley Health Center. This facility is one of the two parking garages proposed to serve the development of North Main Street in the Midtown area. The Midtown Parking Garage West will provide a minimum of 275 parking spaces organized on 3 to 4 floors on the recently acquired parcel that lies between Calaveras Boulevard and the Calaveras off-ramp on the west side of North Main Street. The garage may include retail space on the first floor along the Main Street frontage, a decorative elevator lobby near the northeast corner, nearest the Health Center, and a modest exterior that complements the area. This budget appropriation request will fund the costs for the Midtown Parking Garage West design and architecture services.

Approve an appropriation of \$1,300,000 from RDA tax increment into Midtown Parking Garage West CP 8170 for the parking garage design.

☒ Check if City Council Approval required.

Meeting Date: April 5, 2005

Itemization of funds, if needed:			Amount
Requested by:	Division Head:	Date:	
	Department Head:	Date: 2/29/05	
Reviewed by:	Finance Director:	Date: 8/29/05	
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:			Confirmed by: